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THE IMPORTANCE OF THE MERGER DECISION. — The industrial reorganization during the ten years last past may be set down as making the most important epoch in the economic history of the United States. In consequence of the stress of the situation, the law governing consolidation has been put to the test as never before. The ultimate inquiry has been as to the underlying public policy, which must always be the criterion when any question of law touches the issues of life so nearly. Once in a while, with the more emphasis because of its infrequency, the great truth is shown again that whenever there is an accepted belief among men that a certain policy is their social salvation, that belief has already become a principle of law. The decision in the *United States* v. *The Northern Securities Company et al.*, 120 Fed. Rep. 721, is untechnical, therefore, because it has the unreason of a policy that is believed by most to be indispensable.

When the recent movement is described as the reorganization of the industrial system, it is recognized that the change has been from one unit to another unit. The exact description is that the advance has been from a limited number of corporations into a consolidation of them. Such consolidation in the face of an adverse policy which made against combination has been an almost desperate forward movement. There have been four attempts: First, the pool — a direct agreement between the corporations for their joint operation, *Addystone Pipe Co.* v. *U. S.*, 175 U. S. 211; second, the trust — an indirect arrangement between the shareholders to direct the action of their corporations, *State* v. *Standard Oil Co.*, 49 Oh. St. 137; third, the holding corporation — a central corporation to own the shares of the constituent companies, *Compress Co.* v. *Compress Co.*, 70 Miss. 669; fourth,

the single corporation — which bought the properties of the former corporations outright, *Richardson* v. *Buhl*, 77 Mich. 632. The state of the law at the present writing is that the first and second of these, since they are without central incorporation, are within the plain rule against combination in restraint of trade; while the third and fourth, even though they have central incorporation, are under the same suspicion.

From step to step in this succession there is an evolution towards integration. Indeed the necessity of rapid organization upon the basis of unity was obvious if the law against combination was to be avoided. What makes the holding as to the organization of this Northern Securities Company of much less importance is that the process of integration had gone but half the way. There was a central corporation; but the constituent corporations were left in existence. Long before this new decision it had been recognized that the scheme of the holding company might be illegal as leaving in existence a combination in restraint of trade. *People* v. *Chicago Gas Trust Co.*, 130 Ill. 268; *Pearsall* v. *No. Pacific Co.*, 161 U. S. 646. The legality of the organization of a great industrial company upon the basis of a new incorporation is the crucial question at the present moment. The permanent interest in the Northern Securities Case must be the bearing of it upon the ultimate holding as to the legality of this final form of consolidation — a central corporation in which the constituent companies go out of existence. In truth, these last two forms are very different.

So far had the law gone that at the time of the organization of the Northern Securities Company one might have predicted that it would be obnoxious to established principles if the court applied those principles in a broad way to get at the substance of the matter rather than at the forms employed. The obvious fact was that two great railroad systems had entered into a combination in suppression of competition. It was true that in form these constituent companies were not parties to the combination. The court refused to be stopped by such a fiction. That is the portentous thing — this attitude of the court. This decision against the scheme of the holding company is a decision against a combination in fact, that is all. The present form of organization of the great industrial companies is, therefore, not touched by this decision, for the single corporation is not a combination. *Trenton Potteries Co.* v. *Oliphant*, 58 N. J. Eq. 507; *Oakdale Mfg. Co.* v. *Garst*, 18 R. I. 484. So long as incorporation is permitted to a small enterprise, it must be permitted to a large enterprise. Any danger there may seem to be in this Northern Securities decision is not in the decision itself, but in the possibility of an extension of it. B. W.

CONSTITUTIONALITY OF MUNICIPAL FUEL PLANTS. — Aroused by the recent scarcity of fuel, the legislature of Massachusetts has again consulted the Supreme Court of the state as to the constitutionality of proposed legislation authorizing cities and towns to establish and operate municipal coal yards. *In re Municipal Fuel Plants*, 66 N. E. Rep. 25; *cf. Opinions of the Justices*, 155 Mass. 598; see 6 HARV. L. REV. 100. On the previous occasion five of the justices declared that such a law would be unconstitutional, on the ground that buying and selling fuel is not a public use for which taxation can be authorized, and also that it is not a legitimate governmental function. Mr. Justice Holmes, however, dissented on both points, and Mr. Justice Barker gave a qualified dissent. The present justices,